IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION No.17266 of 1990

Between:

1 Ajmera Bigna, S/o.Bajya,
Both R/O.Komatlagudem, Singareni mandal,
Khammam Dist.

2 Setram, S/o.Ajmera Bigna,
Both R/O.Komatlagudem, Singareni mandal,
Khammam Dist.

..... PETITIONER(S)

AND

1 The Agent to the Govt.(Dist.Collector),Khammam,

Khammam Dist.

2 The Special Deputy Collector (TW), Palvoncha,

Khammam Dist.

3 The M.R.O., Singareni Mandal, Khammam Dist.

4 Sri Yetti Hanumanthu, S/o.Nagaiah,
A.P.Police, Shanthinagaram,
Khammam Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction especially one in the nature of a writ of certiorari calling for the records in C.M.A.No.69 of 1988 and in the case No.211 of 1988 on the file of the Respondents Nos. 1 and 2 respectively and quash the order dated 9th April, 1990 passed by the first respondent in C.M.A.No. 69/88 and pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioner: MR. M. SURENDER RAO

For the Respondents No.1 to 3: GP FOR SOCIAL WELFARE

For Respondent No.4

The Court made the following :

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ORDER: (Per BRSR,J)

This Writ Petition is directed against the proceedings of the 1st respondent, the Agent to the Government (District Collector), dated 09-4-1990, reversing the order passed by the Special Deputy Collector (TW) Paloncha in case No.211/88, dated 28-06-1988. The Agent to the Government accordingly directed the Special Deputy Collector (TW) Paloncha to redeliver the possession of the land admeasuring Acs.4-02 guntas (for short 'the said land') covered by Survey No.408/E situated in Komatlagudem village, Singareni Mandal, Khammam District.

The 4th respondent herein initiated action against the

1st writ petitioner under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1959, (for short 'Regulation 1 of 1959'). The Special Deputy Collector having set the law in motion required the 1st writ petitioner to show cause as to why he should not be ejected from the said land. The simple case put up by the 4th respondent herein who is admittedly a Tribal before the Special Deputy Collector is that his grandfather was the pattedar of the said land. One Shaik Mader "got the sale deed written" when his grandfather was in unconscious stage. That Shaik Mader sold the land to a lambada (writ petitioner herein). The dispossession was not in accordance with law and the possession of the writ petitioners is in contravention of the regulations. The 1st writ petitioner herein deposed before the Special Deputy Collector that Shaik Mader took Acs.4-02 guntas of land of Komatlagudem village from his pattedar Yetti Nagaiah out of Survey No.408/E in the year 1953. Shaik Mader was put in possession of the land immediately after the purchase of the said land in the year 1953 itself and he purchased the land from Shaik Mader during 1978 and continued to be in possession of the same by duly paying the land revenue. In support of his claim, he filed (1) unregistered sale deed, dated 04-04-1953, written on stamp paper by Yetti Henumanthu (predecessor in title of the 4th respondent) in favour of Shaik Mader; (2) sale deed, dated 24-05-1978, written on stamp paper by Shaik Mader in favour of the 1st writ petitioner and (3) the land revenue receipts pertaining to the land from 1972-77 and for the year 1985-86.

The Special Deputy Collector, vide his order,
dated 25-06-1988, came to the conclusion that the transaction was between a tribal to non-tribal during the year 1953 even before the Regulation 1 of 1959 came into force and therefore, the transaction was not hit by the regulations. He also took the view that the subsequent transaction of the land in the year 1978 was from a non-tribal to a tribal and therefore, not hit by Regulation 1 of 1959. The further action was accordingly dropped.

Aggrieved by the said order, the 4th respondent herein preferred C.M.A. No.69 of 1988 before the Agent to the Government. The Agent to the Government once again heard the matter, perused the documents and the oral evidence made available by the parties. On a consideration of the evidence available on record, the Agent to the Government came to the conclusion that the land in Survey No.408/E admeasuring Acs.4-02 guntas was never sold by the tribal owner in favour of Shaik Mader and the possession of the
1st writ petitioner is evident only from 1964-65 as is evident from the certified copy of the pahani patrika of the village and his possession is hit by Regulation 1 of 1959. It is under those circumstances, the Agent to the Government having reversed the order passed by the Special Deputy Collector, directed delivery of possession of the land admeasuring
Acs.4-02 guntas in Survey No.408/E to the 4th respondent by the writ petitioners.

The writ petitioners filed the present writ petition which came up before a Division Bench of this Court and the Division Bench vide its order, dated 25-03-1992, quashed the order passed by the Agent to the Government. This Court found that nowhere, the Regulation 2 of 1970 restricts the transfer from a non-tribal to tribal as the very object and intendment of the above Regulation as also Regulation 2 of 1970 is to safeguard the interests of tribals from unlawful transfers of lands belonging to the scheduled tribes. As on the date of transfer of the land in question by the predecessor in title of the 4th respondent in favour of Shaik Mader, the transfer was not hit by Regulation 1 of 1959 since it is not retrospective in its operation as held by this Court in
G. Narasa Reddy v. Collector, Adilabad District. This Court proceeded on

the assumption that there was a valid transfer of the land admeasuring As.4-02 guntas situated in Survey No.408/E in favour of Shaik Mader in the year 1953 and that Shaik Mader sold the same in favour of the 1st writ petitioner in the year 1978 and the transaction being from a non-tribal to tribal, is not hit by Regulation 1 of 1959.

The 4th respondent herein challenged the orders passed by this Court in the writ petition before the Supreme Court in Civil Appeal No.5502 of 1993. The writ petitioners filed certain documents including the khasra pahani for the year 1954-55 and the pahani patrikas for the years 1955-56 to 1983-84 in the Supreme Court. The Supreme Court having looked into the additional evidence that was produced before it and having granted the special leave, disposed of the appeal in the following manner:

> "Having heard learned counsel for the parties, we allow this appeal and set aside the impugned judgment and order of the High Court requesting it to re-consider the matter on the basis of documentary evidence, some of which has been produced before us and other which the parties will produce before the High court. The appeal is allowed accordingly.
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> Status quo regarding possession be maintained in the meantime."

That is how the matter had come up for hearing before us once again. We have heard Sri M. Surender Rao, learned counsel appearing on behalf of the writ petitioner as well as Sri R. Kameshwar Rao, learned counsel appearing on behalf of the 4th respondent and the learned Government Pleader. We have given our anxious consideration to the submissions made during the course of hearing of this appeal.

The whole case of the writ petitioners rests upon the assertion that the 1st petitioner purchased the land in the year 1978 first under an unregistered sale deed from Shaik Mader and thereafter obtained the registered sale deed on

23-05-1985 and thus he became the owner of the land in question. Shaik Mader in turn purchased the said land as early as on in the year 1953 from the predecessor in title of the 4th respondent herein and the said Shaik Mader remained in possession of the land until the land was sold to him in the year 1978 under an unregistered sale deed. Therefore, the transaction is neither hit by Regulation 1 of 1959 nor Regulation 2 of 1970.

Sri M. Surender Rao, learned counsel for the petitioner, contended that Regulation 1 of 1959 is not retrospective in its operation and therefore, the sale in favour of Shaik Mader is not hit by Regulation 1 of 1959. It is further contended that even if the writ petitioners are found to be in illegal possession of the land bearing Survey No.408/A as is sought to be contended by the 4th respondent, the only remedy available to him in law is to file a suit under the very Regulations to recover the possession. The contention is that at any rate proceedings initiated before the Special Deputy Collector is not maintainable in law.

That as against the said contention Sri R. Kameshwar Rao, urged that neither the writ petitioners nor their predecessor in title were in possession of the land in question in the year 1953 as alleged by the writ petitioners. The
so-called sale, if any, even by Shaik Mader in favour of the writ petitioner is only with regard to land in Survey No.408/A and not the land admeasuring Acs.4-02 guntas in Survey No.408/E with which the 4th respondent is concerned. Even the land purchased by Shaik Mader from the predecessor in title of the 4th respondent is in Survey No.408/A but not in Survey No.408/E. He further contended that there is a presumption raised in Regulation 1 of 1959 that every possession of a non-tribal shall considered to be the possession by virtue of transfer and therefore, the transfer as well as the possession of the writ petitioners so far as the land in Survey No.408/E is concerned, it is hit by Regulations.

It is interesting to notice that the certified copy of the khasra pahani which is admittedly a record filed by the writ petitioners in the Supreme Court, discloses that Survey No.408 is subdivided into Survey No.408/A( ) and 408/E( ). So far as Survey No.408/A is concerned admeasuring an extent of Acs.4-02 guntas, one Yetti Pullaiah the predecessor in title of the 4th respondent is shown as pattedar. The name of Shaik Mader is shown as Kabzadar (possessor). It further reveals that Shaik Mader purchased the said land for a valuable consideration of Rs.1,207-8-0 and an amount of Rs.407-8-0 was due to be paid to the pattedar. The certified copy of the khasra pahani produced before us also reveals that land in Survey No.408/A( ) admesuring Acs.4-02 guntas has been purchased by Shaik Mader as detailed herein above. It further reveals that so far as the land in survey No.408/E( ) is concerned, Yetti Pullaiah, the predecessor in title of the 4th respondent, continued to be pattedar as well as the possessor of the same. It appears that even in the year 1954-55, Survey No.408 in all admeasuring Acs.8-04 guntas was sub-divided into Survey No.408/A( ) and 408/E( ) into two equal extents viz., Acs.4-02 guntas. That so far as Survey No.408/A( ) is concerned, in respect of which the 4th respondent asserted his claim, it always continued to be in the name of his predecessor in title Yetti Pullaiah. The certified copies of the pahani patrikas filed for the years 1955-56 onwards by the writ petitioners disclose that Shaik Mader and thereafter, the writ petitioners were in possession. So far as the land in Survey No.408/E is concerned, Shaik Mader name is shown in the possessory column only from the year 1964-65 onwards.

Be it as it may, the sale deed produced by the petitioners also does not help them in any manner whatsoever. That in the sale deed executed by Shaik Mader, the whole of the Survey No.408 is shown as if, admeasuring Acs.6-00. We have already noted that Survey No.408 has been sub-divided into Survey No.408/A( ) and Survey No.408/E( ) as early as in the year 1954-55 itself. It is not known as to how Shaik Mader could have sold the land admeasuring Acs.6-00 of land in Survey No.408 in favour of the 1st writ petitioner. There is something more than that meets the eye.

The evidence made available on record by the writ petitioners discloses that Shaik Mader, being the predecessor in title came into possession of the land in Survey

No.408/E ( ) admeasuring Acs.4-02 guntas only in the year 1964-65. The 1st petitioner purchased the same under an unregistered transaction in the year 1978 and thereafter under a registered sale deed, dated 23-05-1985, which we have referred hereinabove and the same in no manner supports the petitioners as it does not pertain to the land situated in Survey No.408/E( ). Therefore, we have proceeded on the assumption that the predecessor in title of the writ petitioners came into possession of the land admeasuring As.4-02 guntas in Survey No.408/E( ) for the first time in the year 1964-65.

The questions that fall for consideration are:

1. Whether the possession of the predecessor in title of the writ petitioners is legal ?

2. Whether the Special Deputy Collector has no authority in law to order the eviction of the writ petitioners and recover the same and redeliver it to the 4th respondent ?

The Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1959,(Regulation 1 of 1959) came into operation with effect from 04-03-1959.

Section 2(g) of the Regulation defines as under:

> " 'Transfer' means mortgage with or without possession lease, sale gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing."

Section – 3 (1) (a) of the Regulation discloses that:

> "Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled tribe or a society registered or deemed to be registered under the Andrha Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes."

Section – 3(1)(b) raises a presumption that:

> "Any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe."

We have already noted that Shaik Mader, the predecessor in title of the writ petitioners, is admittedly a non-tribal. He is shown to be in possession of the land in question for the first time in the year 1964-65 as is evident from the certified copies of the pahanies filed by the writ petitioners in the Supreme Court. The presumption is that Shaik Mader who is not admittedly a member of the Schedule Tribe, came into possession of the land in question through a transfer made to him by a member of the Scheduled Tribe. Such transfers are declared as null and void by Regulation 1 of 1959. The possession of Shaik Mader is shown subsequent to that of Regulation 1 of 1959 coming into operation. That means, the acquisition of possession by Shaik Mader shall be presumed to be under a transfer from a member of the Scheduled Tribe in his favour. The transaction of transfer is clearly illegal and contrary to Section 3(1) (a) of Regulation 1 of 1959. The subsequent possession of the writ petitioners is also illegal and contrary to Regulation 1 of 1959.

The writ petitioners failed to prove that they and their predecessor in title Shaik

Mader came into possession of the land in question not in contravention of Regulation 1 of 1959. The acquisition of rights and possession undoubtedly is in contravention of Regulation 1 of 1959.

The writ petitioners miserably failed to establish lawful possession and title to the land in question in spite of their attempts to confuse the issue successfully for all these years. We accordingly hold that Shaik Mader, if at all, purchased the land from the predecessor in title of the 4th respondent, the said land is located in Survey No.408/A( ) and not in Survey No.408/E( ) in respect of which the 4th respondent initiated the proceedings before the Special Deputy Collector. That the extents of the land of both Survey Nos.408/A( ) and 408/E( ) respectively shown to be Acs.4-02 guntas perhaps is one reason for the writ petitioners taking advantage and creating the confusion.

We accordingly hold that that the writ petitioners have no concern in whatsoever manner with the land admeasuring Acs.4-02 guntas in Survey No.408/E( ) situated in Komatlagudem village, Singareni Mandal, Khammam District. The possession of the writ petitioners and their predecessor in title is in contravention of Regulation 1 of 1959. The order of the Agent to the Government in no manner suffers from any legal or factual infirmities. The order does not suffer from any error apparent on the face of the record requiring this Court's interference.

We find no merit in this writ petition and the same shall accordingly stand dismissed with costs quantified at Rs.3,000/-. The Special Deputy Collector shall forthwith, within a period of two weeks from the date of receipt of copy of the order shall resume the possession and redeliver the same to the 4th respondent.

It is brought to our notice that some proceedings are pending between the parties with regard to Sy. No. 408/A and the said proceedings have to be disposed of in accordance with law uninfluenced by the observations if any

made in this order.

ASSISTANT REGISTRAR

//True Copy//

Section Officer

To

1 The Agent to the Govt.(Dist. Collector),Khammam,
Khammam Dist.

2 The Special Deputy Collector (TW), Palvoncha,
Khammam Dist.

3 The M.R.O., Singareni Mandal, Khammam Dist.

4. Two C.Cs. to G.P. for Social Welfare.

5. Two C.Ds.